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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,492	02/06/2004	Sara Elizabeth Caldwell	2003/04	6638

7590 12/08/2005

Gregory N. Clements  
KOSA  
4501 Charlotte Park drive  
Charlotte, NC 28217-1979

EXAMINER
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BOYKIN, TERRESSA M

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/773,492	<b>Applicant(s)</b> CALDWELL, SARA ELIZABETH	
	<b>Examiner</b> Terressa M. Boykin	<b>Art Unit</b> 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Response to Arguments**

Applicant's arguments filed 9-27-05 have been fully considered but they are not persuasive. In response to Applicant's argument that the reference(s) does, do, not contain the limitations on which the Applicant relies, those limitations, substituted cyclic anhydride, are not *satisfactorily* stated in the claims. Applicant's demonstration of substituted anhydrides a0 through f). are not stated in the claims to clearly support and distinguish the anhydride. The fact, that the reference states cyclic anhydride does not automatically exclude those which are substituted. Applicants have not satisfactorily demonstrated how the claims are not anticipated (or rendered obvious) over the reference. Applicant(s) are also reminded that patentability cannot be predicated upon an advantage or result that has not been satisfactorily expressly, or least implicitly, disclosed in the application as filed. Clinical Products v. Brenner, 255 F. Supp. 131, 149 U.S.P.Q. 475, 480 (D.D.C. 1966) Therefore, it is irrelevant whether the reference(s) includes (**or excludes**) those features or not.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 6342578 see abstract, col. 4 lines 10 through col. 5, tables 1-4, cols. 11 lines 28-40, and claims 1-14.

**USP 6342578** discloses a composition comprising: a copolyester of polyethylene terephthalate and a dicarboxylic acid or its ester equivalent, and not more than 100 microequivalents per gram of said copolyester of an anhydride selected from the class consisting of succinic, glutaric, benzoic, maleic and phthalic anhydride, said composition having a CEG content greater than about 25 microequivalents per gram and an IV greater than about 0.65. The reference also discloses a method of making a composition having reduced caustic stress cracking, comprising: reacting terephthalic acid or its ester equivalent and another dicarboxylic acid with ethylene glycol by esterification followed by polycondensation to make a polyethylene terephthalate copolyester; adding at the end of said polycondensation not more than 100 microequivalents per gram based on said copolyester of an anhydride selected from the class consisting of succinic, glutaric, maleic, benzoic, and phthalic anhydride, said composition having a CEG content greater than about 25 microequivalents per gram.

Thus, the reference discloses a polymer resin prepared from the same components as claimed by applicants. Each of the limitations in the claims are clearly found throughout the reference and as cited specifically above; i.e. col. 4 lines 10 through col. 5, tables 1-4, cols. 11 lines 28-40, and claims 1-14, as well as using the

Art Unit: 1711

resin for making containers. Consequently, the claimed invention cannot be deemed as novel and accordingly is unpatentable.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

#### **Correspondence**

**Please note that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov)), from the Office of Public Records and from commercial sources. Applicants may be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.**

Art Unit: 1711

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Terressa Boykin whose telephone number is 571 272-1069. The examiner can normally be reached on Monday through Friday from 6:30am to 3:00pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. The general information number for listings of personnel is ( 571-272-1700).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tmb

  
Examiner Terressa Boykin

**Primary Examiner**

**Art Unit 1711**